

February 13, 2012

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch Secretary Federal Communications Commission 445 12th Street, S.W. Washington, D.C. 20554

Re: Basic Service Tier Encryption; Compatibility Between Cable Systems and Consumer Electronics Equipment, MB Docket No. 11-169, PP Docket No. 00-67

Dear Ms. Dortch:

On February 9, 2012, I spoke with Media Bureau Legal Advisor Jessica Almond on behalf of RCN Telecom Services, LLC ("RCN") regarding the above-referenced proceeding. I reiterated that RCN has been providing standalone broadband offerings at prices and speeds superior to the offerings of its larger competitors. These offerings help fulfill the Commission's broadband objectives, but they also increase RCN's exposure to theft of basic tier cable service. RCN thus requests the Commission to act quickly so that it can use encryption to halt this theft. RCN also asks that if action on the rulemaking is delayed, the Media Bureau grant RCN's request for a waiver with respect to its all-digital systems in New York and Chicago.

RCN also responds here to the ex-parte submissions filed by Boxee, Inc. ("Boxee") in this proceeding on December 21, 2011, February 2, 2012, and February 7, 2012. RCN joins the National Cable & Telecommunications Association in urging the Commission not to allow Boxee's submissions to delay the adoption of its proposed rule. It also writes separately to address the issue of cable theft associated with Boxee's new "Live TV" product, and to explain how the position urged by Boxee in this proceeding would lead to yet greater theft concerns.

Boxee's essential argument is that, because its Live TV product was not designed to decrypt cable television, allowing encryption of the basic tier means that Boxee users will no longer be able to "shave the cord"—that is, access broadcast television through cable lines, while using the Boxee Box to view other content though a broadband internet connection. One can (as

See Letter from Melissa Marks, General Counsel, Boxee, to Marlene H. Dortch, Secretary, FCC, MB Dkt. No. 11-169, PP Dkt. No. 00-67 (Dec. 21, 2011) ("Dec. 21 Boxee Letter"); Letter from Melissa Marks, General Counsel, Boxee, to Marlene H. Dortch, Secretary, FCC, MB Dkt. No. 11-169, PP Dkt. No. 00-67 (Feb. 2, 2012) ("Feb. 2 Boxee Letter and Presentation"); Letter from Melissa Marks, General Counsel, Boxee, to Marlene H. Dortch, Secretary, FCC, MB Dkt. No. 11-169, PP Dkt. No. 00-67 (Feb. 7, 2012) ("Feb. 7 Boxee Letter").

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NCTA has) question this argument both because Boxee itself advertises Boxee Live TV primarily as a "cord cutting" product that doesn't need cable at all, and because Boxee could have readily designed its product to receive encrypted basic service.

RCN, however, is even more concerned that the economics of Boxee's Live TV product benefit greatly from—indeed, may depend upon—basic tier cable theft. Like many cable providers, RCN offers customers both internet access and television service through a single cable. As RCN noted in its previous filings, this means that, because there are no commercially available "traps" that filter video service from Internet service, RCN's internet-only customers can view unencrypted basic tier channels without paying for them.² As a result, a Boxee customer who has RCN internet access—and the Boxee Box *requires* a broadband internet connection—can illegally view broadcast basic channels using the Boxee Live TV and a tendollar cable splitter.³

This is no secret to Boxee's customers. Boxee maintains a bulletin board for its users, and in a comment string entitled, "Would you buy a dongle from the Boxee Box people?," one user asks, "what would happen if I split my Internet coax before my router and connected it to my TV, would I get the basic 20-30 channels?" A forum moderator responds, "That totally depends on how your provider enables their cable TV service. It was true at one time that not all cable providers blocked access to their basic channels from Internet-only subscribers but as time has gone on, this is less and less true." A third user chimes in, "Agreed, my provider does not block basic cable if you pay for HSI & or digital VOIP phone service, so I get about 29 HD channels (10 in Spanish) that I can watch without the trouble of putting up and outside antenna." A fourth user views his unencrypted channels as "free," and asks, "I do have Internet from the

² See Comments of RCN Telecom Services, LLC at 3, MB Docket No. 11-169 and PP Docket No. 00-67 (Nov. 28, 2011).

RCN and similarly situated cable providers are not the only parties victimized by basic cable theft. Broadcasters are deprived of retransmission fees when individuals steal, rather than subscribe to, broadcast cable.

See "Would you buy a dongle from the Boxee Box people?," Comment 90 (Dec. 19, 2011), available online at http://forums.boxee.tv/showthread.php?t=47284 (accessed Feb. 13, 2012) ("Would You Buy Thread").

The moderators on this bulletin board appear to be Boxee users, not employees, but Boxee describes them as follows: "Moderators oversee specific forums. They generally have the ability to edit and delete posts, move threads, and perform other actions. Becoming a moderator for a specific forum is usually rewarded to users who are particularly helpful and knowledgeable in the subject of the forum they are moderating," see "Reading and Posting Messages", available online at http://forums.boxee.tv/faq.php?faq=vb3_reading_posting#faq_vb3_mods_admins (accessed Feb. 13, 2012).

⁶ See Would You Buy Thread, Comment 90 (Dec. 19, 2011).

⁷ See id. Comment 96 (Dec. 19, 2011).

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local cable provider, and because of that I get a dozen free channels. If I were to use the Boxee tuner, do you think I would be able to get those channels in HD?"

To be clear, RCN is aware of no evidence that Boxee itself has encouraged its users to steal basic cable service. The reality is, however, that the Boxee Live TV add-on makes it incredibly easy for Boxee customers to use their Boxee Boxes to view for free the unencrypted stations available through customers' cable-based Internet connections.

Indeed, Boxee's own advocacy raises questions as to whether the viability of the Boxee Live TV depends on basic service theft. Boxee would have the Commission believe that its potential customers would pay for the basic tier—which for RCN, for example, is \$18.50 per month in New York and \$22.50 in Chicago—but that if those customers were required to pay \$7.50 per month for a basic set-top converter (\$4.95 in Chicago), they would refuse to buy Boxee's product. This is not credible, particularly given that Boxee charges \$169.99 for the Boxee Box and another \$49.99 for the Boxee Live TV. If Boxee's customers are as price sensitive as described, it is far more likely that Boxee customers with inadequate over the air reception would choose the Boxee product *only if they could avoid the basic tier fee in the first place* by stealing the service. The service is a service of the service of the service.

Boxee's related concerns that the Boxee Live TV cannot receive a decrypted signal from a cable box are of its own making. The Boxee Live TV began shipping only weeks ago¹¹, while the present proceeding has been pending for months. Boxee was presumably well aware that the encryption of the basic tier of cable stations was on the horizon, but elected to ignore this in

See id., Comment 118 (Dec. 25, 2011). Other threads contain similar materials. See, e.g., "Got Live Tv today but...," Comment 9 (Feb. 4, 2012), available online at http://forums.boxee.tv/showthread.php?t=53353 (accessed Feb. 13, 2012) ("Try this as I've seen this work. Where the Comcast cable comes out of the wall install a splitter. Attach two cables to the other side. One needs to go to the cable modem for your internet and the other directly to the Live TV dongle for Boxee Box. This should provide you with a variety of TV channels. The local channels should be available in HD."); "1.5 Released -Boxee Live TV now available for \$49 – let the cord cutting begin!," Comment 24 (Jan. 24, 2012), available online at http://forums.boxee.tv/showthread. php?t=52319 (accessed Feb. 13, 2012) ("When I cancelled my cable 4 months back they just took my HD box and did [not] cut my cable. Will I get any HD channels if I plug my basic cable into the boxee box via the new dongle?").

See Dec. 21 Boxee Letter at 3 ("These consumers will be less likely to purchase Boxee's product if they are required to also pay for a converter box from their cable operator (again, assuming such boxes are compatible) in order to access basic tier cable.").

In any event, if Boxee's customers were price sensitive in the way Boxee describes, it would have made more sense for Boxee to incorporate CableCARD technology into its box—which would have reduced RCN's equipment charge to between \$1.50 and \$2.00 per month.

See "Boxee Live TV now available for \$49 – let the cord cutting begin!," available online at http://blog.boxee.tv/2012/01/24/boxee-live-tv-now-available-for-49-let-the-cord-cutting-begin/#.TzmqX8j3LT4 (accessed Feb. 13, 2012) (noting a January 24, 2012 ship date for the first consumer-available Boxee Live TV).

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designing the Boxee Live TV. Given this timing, Boxee's claim to have relied on the encryption ban is specious, and it is reasonable that Boxee at least perform the minimal reengineering necessary to make the Boxee Live TV compatible with a cable box.

Again, RCN has no quarrel with Boxee's business or its products. And it is confident that Boxee can readily engineer a solution that allows its Live TV product to receive encrypted basic tier programming or a post-converter box stream. But Boxee cannot reasonably ask the Commission to abandon or delay this rulemaking while introducing ¹² a product that promises to contribute to the very theft-of-service problem at issue here. As such, RCN reiterates its request that the Commission act to adopt its proposed rule in this proceeding with all reasonable haste.

* * *

Because of the acute theft-of-service problems described in RCN's earlier submissions, RCN also requests that the Commission permit cable operators to begin to encrypt basic tier signals upon release of any Order eliminating the ban on basic tier encryption, rather than forcing operators to wait until 30 days after publication in the Federal Register. In the alternative, RCN asks the Commission to grant (or permit the Media Bureau to grant) RCN a waiver of the existing rules with respect to its New York and Chicago systems, so that RCN may begin encrypting those systems immediately upon release of the Order. ¹³

Sincerely,

John Nakahata

Counsel for RCN Telecom Services, LLC

cc: Jessica Almond
Sherrese Smith
Bill Lake
Michelle Carey
Mary Beth Murphy
Steve Broeckaert
Brendan Murphy

Boxee sold the Boxee Box on the international consumer market for more than a year before the very recent introduction of Boxee Live TV. *See* "Boxee Box by D-Link launches, good news re Netflix and Hulu," available online at http://blog.boxee.tv/2010/11/10/boxee-box-starts-shipping-new-boxee-version-netflix-and-hulu-plus-too/#.TzmpRsj3LT4 (accessed Feb. 13, 2012) (marking the launch of the Boxee Box on November 10, 2010).

As the Commission is aware there was no substantive opposition to RCN's request for a waiver.